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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,435	01/19/2001	John Michael Friel	6258-003	7158

7590 03/24/2006

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EXAMINER
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JASMIN, LYNDIA C

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/766,435

Applicant(s)

FRIEL ET AL

Examiner

Lynda Jasmin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Amendment received July 11, 2005 has been acknowledged.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock et al. (5,672,649), in view of Elsamanoudi (5,340,394).

Brock discloses a method for manufacturing a line of paint products from a limited set of prepaints (via pre-mixed aqueous modules (units)) comprising: providing a set of different but mutually compatible prepaints, sufficient to form at least one paint line (via mixing at least two storage-stage pre-mixed aqueous modules (units) to form a lacquer), which set comprises:

at least one fluid polymeric binder prepaint (such as latex polymer binders), and  
at least one additional, different fluid prepaint selected from the group consisting of said fluid polymeric binder prepaint (col. 7, lines 39-47), receiving each of said fluid prepaints at one of several inputs of a fluid component mixing system, to prepare a first base paint (via various latex binders and mixtures thereof and other additives such as deformers or neutralizing agents such as bases (col. 3, lines 62-64; col. 7, lines 61-67), wherein said prepaints are mixed according to a first prepaint ratio, and a second prepaint ratio and wherein said first prepaint ratio and said second prepaint ratio are

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determined at a computer system; and wherein said first prepaint ratio is different from said second prepaint ratio (col. 7, lines 30-33; col. 8, lines 8-13).

Further, at least one of said first base paint and said second base paint further comprises an associative thickener (col. 8, lines 18-25).

Although Brock discloses special effect pigments that are distinguished in particular by a plate like structure which produce a decorative effect in lacquer coatings, however, Brock does not explicitly disclose a fluid white-opacifying pigment.

Elsamanoudi discloses the concept of adding opacifying pigments to concentrated pigment colorant of to provide a white tinter. Elsamanoudi further discloses that white-opacifying pigments typically include rutile and anatase titanium dioxide. The preferred white inorganic opacifying pigment is rutile titanium dioxide having a weight average particle size between about 0.2 to 0.4 microns. Although most opacifying pigments are white, all opacifying pigments have a high index of refraction above about 1.8 regardless of its tinting (tintorial) effect on the resulting paint film. Opacifying pigments comprise between about 30% and 60% on a dry solids weight basis to provide a white tinting concentrate.

From this teaching of Elsamanoudi, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the special effect pigments such as titanium dioxide coated of Brock to include the white-opacifying pigments taught by Elsamanoudi in order to facilitate tinting of consumer trade sales paints.

***Response to Arguments***

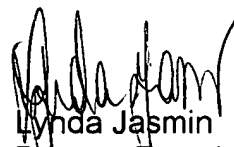
4. Applicant's arguments with respect to claims 31-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda Jasmin whose telephone number is (571) 272-6782. The examiner can normally be reached on Monday- Friday (9:30-6:00) with Thursday Telework.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Lynda Jasmin  
Primary Examiner  
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